IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 1180 of 2001()

CC.964/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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APPELLANT/COMPLAINANT:

ABDUL HAMEED,
S/O. THAIKANDIPARAMBIL KUNHIBHAVA,
KADEEJA NIVAS, VAKA DESOM, ELAVALLY VILLAGE,
CHAVAKKAD TALUK.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS/STATE & ACCUSED:

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1. STATE OF KERALA REPRESENTED BY
   PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

2. M.GOVINDAN, S/O. KRISHNAN NAMBOODIRI,
   MULLAMANGALAM MANA,
   GURUVAYOOR P.O.,
   THRISSUR DIST.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN
PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 1180 OF 2001

DATED THIS THE 12th July 2007

JUDGMENT

The appellant is the complainant in C.C.No.964/1998 in the file of the Judicial Magistrate of the First Class, Chavakkad with respect to the offence under Section 138 of the Negotiable Instruments Act. The court below acquitted the accused. The case of the complainant is that the accused borrowed a sum of Rs.1,45,000/- from the complainant and later issued the impugned cheque for the above amount which when presented got dishonoured for want of funds in the account of the accused.

2. The evidence adduced in the matter consisted of the testimony of PW1 and Exts.P1 to P12. The defence got marked Exts.D1 to D3.

3. The trial court acquitted the accused for the following reasons that in the beginning of the chief examination itself when he was questioned whether he has got any transaction with the accused the answer was 'no' and further he mentioned the date of the cheque wrongly, i.e. 1-7-1998 instead of 22-7-1998. In fact the case of the complainant is that the demand was made on 1-7-1998. Further, the signature in the cheque is in a different ink. So also the date of

the borrowal is not mentioned in the complaint or in his evidence. Further the complainant admitted that the cheque was issued as security. On a perusal of the evidence, it appears to me that a reconsideration is required.

In the circumstances, the order of the court below is set aside and the matter is remitted back to the court below for fresh disposal after permitting the parties to adduce further evidence, if they so desire. The parties shall appear before the court below on 10-8-2007.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.A. 1180 of 2001
JUDGMENT

12-7-2007